

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

MARKEL JOHNSON

Plaintiff,

Case No. 10-C-337

v.

**STATE OF WISCONSIN DEPARTMENT
OF CORRECTIONS and HOLLY MEIER, _____
Defendants.**

ORDER

The plaintiff, a state prisoner proceeding pro se, seeks relief under 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

By order dated May 7, 2010, plaintiff was directed to pay the Clerk of Court a sum of \$11.65 within 21 days, as an initial partial filing fee. Plaintiff was advised that upon payment of this fee the court would determine whether the action could proceed in forma pauperis. Plaintiff was warned that failure to pay the initial partial filing fee would result in dismissal of this case for failure to prosecute, and he would still owe the entire \$350 filing fee.

To date plaintiff has not paid the initial partial filing fee. From this failure to pay the initial partial filing fee I infer that plaintiff no longer wants to prosecute this action. Therefore, I will dismiss this case without prejudice. The dismissal does not excuse plaintiff from paying the \$350 filing fee.

To determine whether plaintiff must pay the entire \$350 filing fee at once, or instead over time, I next assess plaintiff's petition for in forma pauperis status. Having reviewed plaintiff's trust account statement and his affidavit of indigency, I find that plaintiff lacks the

funds to pay the entire \$350 filing fee at once. Accordingly, plaintiff's petition for in forma pauperis status will be granted, and he will be required to pay the filing fee pursuant to the payment schedule set forth in 28 U.S.C. § 1915(b)(2).

For the reasons stated, **IT IS ORDERED** that plaintiff's petition for in forma pauperis status is **GRANTED**.

FURTHER, IT IS ORDERED that this action is **DISMISSED WITHOUT PREJUDICE** for failure to prosecute, pursuant to Fed. R. Civ. P. 41(b) and Civil L.R. 41(c) (E.D. Wis. 2010).

IT IS FURTHER ORDERED that this dismissal will **NOT** be recorded as a "strike" under 28 U.S.C. § 1915(g).

IT IS FURTHER ORDERED that the Secretary of the Wisconsin Department of Corrections or his designee shall collect the \$350 filing fee by capturing twenty percent of the income deposited to plaintiff's prison trust account each month. Once the accumulated twenty percent deductions exceed \$10.00, prison officials shall forward the accumulated deductions to the Clerk of the Court in accordance with 28 U.S.C. § 1915(b)(2). Each payment shall be clearly identified by the case name and number assigned to this action. Prison officials shall repeat this procedure until the filing fee is paid in full. The only payment for an amount less than \$10.00 should be the final payment.

Dated at Milwaukee, Wisconsin, this 11 day of June, 2010.

/s

LYNN ADELMAN
District Judge